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THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of:

Larrick, et al.

Serial No.: 09/251,297

Group Art Unit: 2634

Filed: February 17, 1999

Examiners: Evay Zheng

For: **ULTRA WIDEBAND
TRANSMITTER AND RECEIVER**

October 13, 2006

Refund Ref: 03/06/2007 CKHLOK 0000156182

CHECK Refund Total: \$1000.00

**Petition for Revival, or Alternatively,
Reconsideration of the Decision on Petition**

Office of Petitions, Mail Stop Petitions
Commissioner for Patents
Alexandria, VA 22314-1450
(Fax (571) 273-8300)

Sir:

In response to the Decision on Petition mailed September 26, 2006, applicants hereby petition to revive the above-identified application under 37 CFR §1.137(a) or (b) due to unintentional or unavoidable abandonment, or alternatively, request reconsideration of the Decision on the petition to withdraw the notice of abandonment. The application purportedly became abandoned due to lack of receipt of corrected drawings. The maximum fee of \$1500 (unintentional abandonment) accompanies this petition.

Facts

On October 7, 2005, applicants filed 17 sheets of corrected replacements drawings, which were duly entered into the record. (Thus, there was no basis for abandonment, as deemed by the Office of Publications.)

Adjustment date: 03/06/2007 CKHLOK
09/16/2006 SZEWDIE1 00000006 09251297
01 FC:1453 -1500.00 OP

10/16/2006 SZEWDIE1 00000006 09251297

01 FC:1453

1500.00 OP

03/05/2007 CKHLOK 00000014 09251297

01 FC:1452 500.00 OP

On January 17, 2006, the Office mailed a Notice of Allowance erroneously indicating that corrected drawing must be filed.

On March 14, 2006 applicants paid the issue fee of \$1400 but did not respond to the "moot" drawing requirement since corrected drawings had already been filed and duly entered into the prosecution file of the application.

On June 7, 2006, the Office mailed a Notice of Abandonment indicating, incorrectly, that no corrected drawings had been received as required by the notice of allowance.

On June 12, 2006, upon receipt of the Notice of Abandonment, the undersigned counsel telephoned the Office of Publications (Ms. Blanch Mae) and informed that the Office had made a mistake because corrected drawings had already been filed and duly entered into the record. Mr. Blanch Mae, after inspecting the PAIR, confirmed that all 17 sheets drawings were, in fact, already present in the file and instructed the undersigned to fax a petition to withdraw the notice of abandonment along with copies of the previously filed drawings. When the undersigned again contacted the Office of Publication on June 27, 2006 to ascertain the status of the application, Ms. Mae put the undersigned in touch with her supervisor, Ms. Sheryl McCloud, who instructed the undersigned to again fax to the Office of Publications the petition to withdraw the notice of abandonment, which the undersigned did that same day (fax cover sheet attached).

On September 21, 2006, the undersigned again telephoned Ms. Sheryl McCloud of the Office of Publications to check on the status of the application and, upon checking into the matter, Ms. McCloud again asked that the undersigned again fax the petition, which the undersigned did that same day (fax cover sheet attached).

On September 26, 2006, the Office of Publication issued the Decision of Petition dismissing the petition indicating that applicants should have filed a petition within two months of the "moot" drawing requirement contained in the notice of allowance.

On October 2, 2006, the undersigned telephoned Examiner Fan in an effort to obtain a "corrected" notice of allowance to remove the drawing requirement. Examiner Fan, who also acknowledged receipt of corrected drawings, indicated that the Office should have reviewed the application file for receipt of corrected drawings of October 7, 2005 before sending the Notice of Allowance to applicants on January 17, 2006, but had failed to do so. Examiner Fan indicated the oversight may have occurred due to the long delay between his internally allowance on June 22, 2005 and the actual mailing of the Notice of Allowance to applicants on January 17, 2006, which resulting in the Office overlooking of the interim filing of corrected drawings. Despite the oversight, however, Examiner Fan indicated that he could not issue a "corrected" notice of allowance and that applicants should file a petition to revive.

On October 13, 2006, applicants submit this petition to revive, but in the first instance, request reconsideration of the petition to withdraw the notice of abandonment because the drawing requirement, when issued, was moot and/or mistakenly made by the Office.

Request for Revival and/or Withdrawal of Notice of Abandonment

The entire period of delay on the part of applicants, if any, was unintentional or unavoidable.

No response to any outstanding requirement is filed with this petition because the drawing requirement is moot as corrected drawings were already filed and entered into the record on October 7, 2005.

The issue fee and publication fee were already paid on March 14, 2006.

Since the application was filed after June 8, 1995, no terminal disclaimer is required.

The entire delay, if any, in filing any required reply from the due date for any required reply until the filing of a grantable petition under 37 CFR 1.137(a) or (b) was unintentional or unavoidable.

Due to the circumstances, applicants have been unnecessarily burdened and believe the abandonment, if it in fact occurred, was unavoidable since, in the undersigned counsel's 34 years of practice, the Office has never required a response to moot issue raised in a paper issued by the Office. Such matters were always resolved by a telephone call, which applicants attempted to do in this case.

Applicants request revival and prompt issuance of the patent due to unintentional or unavoidable abandonment.

Applicants also request a refund of the \$1500 petition fee, or portion thereof.

Respectfully submitted,
McINTYRE HARBIN & KING LLP



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UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

| REQUEST FOR PATENT FEE REFUND | | | | |
|---|-----------------------------------|-------------------------------------|---|-------------|
| 1 Date of Request: <u>03/02/06</u> | | 2 Serial/Patent # <u>09/251,297</u> | | |
| 3 Please refund the following fee(s): | | 4 PAPER NUMBER | 5 DATE FILED | 6 AMOUNT |
| | Filing | | | \$ |
| | Amendment | | | \$ |
| | Extension of Time | | | \$ |
| | Notice of Appeal/Appeal | | | \$ |
| X | Petition | IFW | 10/13/06 | \$ 1,000.00 |
| | Issue | | | \$ |
| | Cert of Correction/Terminal Disc. | | | \$ |
| | Maintenance | | | \$ |
| | Assignment | | | \$ |
| | Other | | | \$ |
| | | | 7 TOTAL AMOUNT OF REFUND \$ 1,000.00 | |
| 10 REASON: | | 8 TO BE REFUNDED BY: | | |
| X | Overpayment | X | Treasury Check | |
| | Duplicate Payment | | Credit Deposit A/C #: | |
| | No Fee Due (Explanation): | 9 | <div style="border: 1px solid black; display: inline-block; width: 100px; height: 20px; text-align: center;"> -- </div> | |
| | | | | |
| 11 REFUND REQUESTED BY: | | | | |
| TYPED/PRINTED NAME: <u>Derek L. Woods</u> | | TITLE: <u>Attorney</u> | | |
| SIGNATURE: | | PHONE: <u>2-3232</u> | | |
| OFFICE: <u>Petitions</u> | | | | |
| ***** THIS SPACE RESERVED FOR FINANCE USE ONLY: ***** | | | | |
| APPROVED: | | DATE: <u>3/6/07</u> | | |

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to:

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